

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13484 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AMTS

Versus

AHMEDABAD MUNICIPALITY NOKAR MANDAL & 1

Appearance:

1. Special Civil Application No. 13484 of 1994
MR MG NAGARKAR for Petitioner No. 1
RULE SERVED for Respondent No. 1
MR MB GANDHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 08/09/2004

ORAL JUDGEMENT

Heard learned advocate Mr.M.G.Nagarkar on behalf
of the A.M.T.S. and learned advocate Mr.M.B.Gandhi for

respondent workman.

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#. In the present petition, the petitioner Transport Service has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference [IT] NO.74 / 1993 dated 9th September, 1993 whereby the Industrial Tribunal has directed the Transport Service to correct date of birth of the respondent workman in service book as 20th November, 1942 instead of 16th march, 1935 and also directed Transport Service not to retire the respondent workman till he reached age of superannuation on the basis of birth of date as 20th November, 1942. Affidavit-in-reply has been filed by the workman.

#. Initially, this Court has issued Rule and Notice as to interim relief making it returnable on 17th January, 1995 by order dated 19th December, 1995. Thereafter, the matter was adjourned on 27th January, 1995. On 27th January, 1995, this Court made order to continue the ad-interim relief granted earlier. But from the earlier order, it is not correct that any ad-interim relief was granted at earlier point of time. Thereafter, matter has been adjourned on many occasions from time to time for final hearing. Therefore, it is clear from the record that no ad-interim relief and stay against the award in question was granted in favour of the petitioner. This fact was also brought to the notice of the Transport Manager by letter dated 19th December, 1994 written by the learned advocate for the petitioner. Therefore, in pursuance of the award, the respondent workman remained in service upto the date of retirement on the basis of date of birth 20th November, 1942 and he retired on 30th November, 2000. The petitioner transport service has implemented the award in question and continued the respondent in service upto 30th November, 2000 on the basis of the date of birth 20th November, 1942.

#. Learned advcoate Mr.Nagarkar has vehemently submitted that the Industrial Tribunal had no jurisdiction to correct the date of birth of the respondent which has been recorded by the Transport Service. He also submitted that the Industrial Tribunal has also committed gross error in deciding the disputed question of facts between the parties. The date of birth which was recorded by the Transport Service was on the basis of the medical certificate issued by the L.G.Hospital on medical examination of the workman at the instance of the Transport Service and thus, at the time when the respondent workman was appointed, he was medically examined and found aged 28 years old and on that basis,

date of birth came to be recorded in the service book of the respondent as 16th March, 1995. It is also contended by the learned advocate Mr.Nagarkar that the date of birth which was recorded in the service book at the time of appointment calculating his age of 28 years, was accepted by the workman and the workman signed the service book accordingly. But after many years, beyond period of limitation prescribed under the Administrative Rules of the Transport Service, he raised the dispute for correction of the date of birth and therefore, the Tribunal has committed gross error in correcting the date of birth of the workman concerned. Mr.Nagarkar submitted that at the time when the respondent workman had joined service with the petitioner, he had not produced any documentary evidence in support of his date of birth and therefore, he was examined through the Civil Surgeon and accordingly his date of birth was determined by the transport service as per the Service Rules of the Transport Service.

#. Learned advocate Mr.Gandhi, on the other hand, supported the order in question and submitted that award has been fully complied with by the Transport Service as no stay has been granted by this Court at the time of issuing Rule and therefore, once the order in question has been fully implemented in favour of the workman, in that case, disturbing the said finding at this stage, as it would adversely affect on pensionary benefits being received by the workman. Therefore, on this ground also, the award under challenge may not be disturbed by this Court.

#. I have considered submissions made by the learned advocates for the parties. It has clearly come on record that at the time respondent joined service of the petitioner, he had not produced any documentary evidence in support of his date of birth and consequently, he was medically examined by the Civil Surgeon and on examination, he was found aged 28 years and on that basis 16th March, 1935 was determined as date of birth by the Transport Service and said birth of date was recorded in the service book and the same was signed by the respondent. However, subsequently, request was made by the respondent workman in the year 1993 when he was called upon by the Deputy Superintendent that now he was due to retire on 30th March, 1993, at that time, the workman had raised objection that he has not attended 58 years of age and therefore, he was entitled to remain continue in service because his correct date of birth is 20th November, 1942 and the date of birth which is recorded in the service book, is not correct. In support

of that objection, he produced school leaving certificate which showed the date of birth of the respondent as 20th November, 1942. Before the Tribunal, the respondent workman was examined at Exh.24. It is important to note that no one was examined on behalf of the Transport Service and as such, no witness was examined by the petitioner. Thereafter, the Tribunal has considered merits of the matter and the fact that the workman was appointed in the category of the Driver in the year 1963 and his date of birth was recorded on the basis of medical certificate as 16th March, 1935. Thereafter, the Tribunal has further examined the matter and considered school leaving certificate produced by the workman which suggested the date of birth as 20th November, 1942. The respondent workman has given application to the Industrial Tribunal to call the Principal of Navagam Primary School and accordingly, the Tribunal issued summon and called upon the Principal of Navagam Primary School, and in the examination, it was proved that the date of birth of the respondent as per the documentary evidence produced by the school authority as 20th November, 1942. Thus, it has come on record from the original record of the school authority which was called for by the Tribunal the date of birth recorded in the school record as 20th November, 1942. As per the said record, the respondent was admitted in school on 1st September, 1952 and therefore, considering his date of birth in the year 1942, he was admitted in the school at the age of 9 years and he studied upto second standard and thereafter left the school on 21st January, 1954. The Tribunal has discussed that if the date of birth recorded by the Transport Service is believed to be correct as 16th March, 1935, then, it has to believe that the respondent workman was admitted in the school at the age of 17 years, that is not possible and not believed by the Tribunal. Therefore, the Tribunal has considered the entire facts and circumstances of the case and the delay aspect in raising the dispute as regards the date of birth which is contrary to the circular issued by the Transport Service. It was case of the transport service before the Tribunal that when the Circular was issued by the transport service in respect of the date of birth, no such application was submitted by the respondent workman. Therefore, now after such long passage of time, application should not be considered. But the Tribunal has considered the evidence of the workman that he was not aware as regards this circular and therefore, the Tribunal has not believed the contention of the transport service as to delay and examined the merits of the matter and on merits, after appreciation of documentary and oral evidence, the Tribunal has found that the date of birth

transpired in the school leaving certificate is found to be just and correct in comparison to the date of birth 16th March, 1935 recorded by the transport service. Accordingly, the Tribunal has come to the conclusion that the correct date of birth of the respondent workman is 20th November, 1942 and not the date of birth 16th March, 1935 as recorded in the service book of the respondent by the transport service.

#. I have perused the award in question and also gone through the observations made by the Tribunal. According to my opinion, the Tribunal has rightly appreciated the oral and documentary evidence and also rightly considered that if the date of birth recorded in the service book as 16th March, 1935 is believed to be correct, then it mean to believe that the workman was for the first time entered and admitted in the school at 17 years of his age, that was not possible as per the presumption of Tribunal. As per the original school record produced by the Principal of Navagam Primary School, the date of birth of the respondent workman is 20th November, 1942 recorded at the time when the workman was got admitted in the school and he studied upto 2nd Standard and left the school in the year 1954. Therefore, according to my opinion, the Tribunal has not committed any error while passing the award under challenge and afterall, it is finding of fact recorded by the Tribunal and this Court cannot reapprciate the same. Moreover, the award under challenge has been fully complied with and implemented by the Transport Service and the workman concerned has retired on 1st December, 2000 and the fact that this Court has not granted any stay at the time of issuing Rule in the matter. This Court cannot act as an appellate authority and cannot reapprciate the evidence as appreciated by the Tribunal and as such, there is no procedural irregularity committed by the Tribunal found apparently on the face of record, in my opinion, no interference of this Court is called for while exercising the jurisdiction under Article 227 of the Constitution of India.

#. In view of aforesaid discussion, there is no substance in the present petition and the same fails. Petition is, therefore, dismissed. Rule discharged. No order as to costs.

#kailash, ps#